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No. 868

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

GERALD TAYLOR, and CLIFTON A. HAMMOND,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR FOURTH CIRCUIT

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To the Honorable Chief Justice of the United States and the Honorable Associate Justices of the Supreme Court of the United States

The petitioners respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered January 10, 1964, affirming the judgment of conviction that was entered by the United States District Court for the District of Maryland against the petitioners for violations of the Internal Revenue Code (26 U.S.C., Sections 4401, 4411, 4412, 4901, 7203, 7262 and 7272); violations of the Code of Federal Regulations (Title 26, Section 325.50).

OPINIONS BELOW

There was no opinion in the United States District Court for the District of Maryland.

The opinion of the United States Court of Appeals rendered January 10, 1964 is not yet reported but is contained in the Appendix hereto.

JURISDICTION

The jurisdiction of this Court is invoked under Section 1254(1) of Title 28 of the United States Code and Rule 37(c) of the Federal Rules of Criminal Procedure.

The judgment of the United States Court of Appeals for the Fourth Circuit sought to be reviewed was dated and entered January 10, 1964.

On February 10, 1964, this Court granted an extension of time within which to file a petition for Writ of Certiorari to and including February 25, 1964.

QUESTION PRESENTED

In a case where federal agents execute a search warrant for violation of wagering tax laws for suspected lottery activity and seize a quantity of lottery equipment and also non-contraband from the person of the petitioners in the raid and the petitioners file a pre-trial motion "to suppress evidence and for the return of property", is it not a denial of due process of law for the Court (both trial and appellate) to determine that since the motion seeks the return of property that this constitutes an admission that the contraband belongs to them and that they thus have a proprietary interest in the lottery, and are consequently guilty of the charged offenses, when the motions do not claim ownership of the gambling articles and when a fair reading of the motion clearly shows that they want the return of their personal property?

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution

Fifth Amendment:

"No person shall be . . . deprived of life, liberty, or property without due process of law. . . ."

STATEMENT OF THE CASE

The instant cause came on for trial by the Court, sitting without a jury in the United States District Court for the District of Maryland on May 7, 1962. The petitioners, Gerald J. Taylor and Clifton A. Hammond, (and two others who are not before this Court) were charged with violations of Title 26 U.S.C. Sections 4401, 4411, 4412, 7203, 7262 and 7272; violations of the Code of Federal Regulations, Title 26, Section 325.50 (receiving wagers without having paid the special occupational tax, failure to register, and failure to supply required information); and violations of Title 18, USC, Section 2 (aiding and abetting).

The evidence adduced at trial established that the petitioners had been seen on many occasions during a nine day period by special Agents Arnold G. Bedingfield and William H. Jewell, to arrive in Arundel County. They took from the cars, boxes, parcels, and containers and then entered the premises. The agents concluded that the petitioners were involved in the operation of a numbers game.

A search warrant was issued on July 17, 1959 for the premises upon the basis of an affidavit made by Agents Bedingfield and Jewell. The petitioners were arrested on July 17, 1959, at the time of the execution of the search warrant.

Agent Bedingfield, called as a witness for the government, testified that in the premises, he observed the pe-

titioner Taylor removing money from envelope on a table in front of him and "stuffing" the money into his pockets.

Agent Haspert, a government witness, testified that when questioned the petitioners stated that they were familiar with the requirements of a Federal Gambling Stamp.

The officer seized numerous paper writings, slips, notations, telephone equipment, furnishings, money and two automobiles as gambling paraphernalia. In addition, they seized among other things $1,088.00 plus $184.00 from the pockets of the petitioner Taylor; $86.16 from the pockets of the petitioner Hammond.

Upon cross-examination, Agent Bedingfield testified that he had never seen any of the petitioners accept a numbers bet.

It was established that several months after their arrests, the petitioners filed a motion to suppress for use as evidence all of the articles and objects that were seized at the time of their arrests. In the motions the petitioners asked for the return of certain monies which had been seized from their person. The motion was denied on April 11, 1960. The transcript of the proceedings of the hearing on the motion was introduced into evidence and marked as the government's exhibit number one. At the close of the government's case the petitioners made a motion for a judgment of acquittal, the Court denied the motion. At the conclusion of the trial the petitioners renewed their motions for judgment of acquittal, as well as all prior motions made.

The cause came on for verdict and sentencing on November 2, 1962. The petitioners were found guilty on all counts; and sentence was imposed. An appeal to the United States Court of Appeals for the Fourth Circuit followed. By judgment dated January 10, 1964, the Court affirmed the District Court judgment.

REASONS FOR ALLOWANCE OF THE WRIT

It has been well established in our system of jurisprudence that in a criminal case the prosecution must always prove the criminal charge beyond a reasonable doubt. The petitioners contend that in the instant case the government failed to meet its burden of proof and that the conviction herein is not supported by the evidence. Thus, the petitioners urge that this Court grant a petition for a Writ of Certiorari to the Court of Appeals for the Fourth Circuit on the ground that the conviction contravenes the well-ordered administration of justice so as to call for the exercise of this Court's supervisory powers.

The issue before the Trial Court was whether the petitioners had such a proprietary interest in the lottery operation as to justify a finding that they were "bankers",[1] and hence liable for the wagering tax.

The Trial Court determined that the allegations contained in the pre-trial motion made by the petitioners and titled "Motion to Suppress Evidence and To Return Property" supported a finding that the petitioners had such a proprietary interest in the lottery operation. In that motion the petitioners moved the Court 1) to suppress for use as evidence all articles and objects seized at the time of the arrest, and (2) for the return of certain monies which had been seized from their persons, as well as the return of the car which belonged to the petitioner Hammond. It must be noted that none of the items seized from the persons of the petitioners, and claimed as their own, was necessary to the conduct of the lottery operation, or even in the nature of "numbers" paraphernalia. Hence, it would have been of little benefit to the petitioners to have these items suppressed as evidence.

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[1] The case of United States v. Calamaro, 354 U.S. 351 (1951) determined that the obligation to purchase the special occupational tax stamps applies to the banker in a numbers or lottery business.

On the other hand, the property listed separately in the paragraph numbered one was part of the numbers operation. At no point in the motion do the petitioners assert that these articles belong to them, nor do they claim any right to their possession, custody or control. At best it can only be said that the wording of the motion is vague and ambiguous, and does not permit any inference as to who owned the property listed therein.

Surely, if the allegations within the motion are to be deemed as admissions against the petitioners' interest, the admissions should be clear and unequivocal so as to admit of one—and only one—inference.

Any doubts caused by the wording of the Motion should be resolved in favor of the petitioners. In 1894, this Court stated in a Note titled *Presumption of Innocence and Legality; Qualifications of the Rule:*

> "One of the most important legal presumptions is that of innocence. This presumption, which in legal praseology, 'gives the benefit of a doubt to the accused', is so cogent, that it cannot be repelled by any evidence short of what is sufficient to establish the fact of criminality with moral certainty."

Plainly, then, a reading of the motion does not disclose that the petitioners have a proprietary interest in the lottery operation.

Thus, there is no evidence of any proprietary interest which would make the petitioners liable for the wagering tax.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8822.

United States of America,
Appellee,

versus

Gerald J. Taylor, Clifton A. Hammond, and John W. Butler, Jr.,
Appellants.

APPEALS FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE.
R. DORSEY WATKINS, DISTRICT JUDGE.

(Argued September 25, 1963. Decided January 10, 1964.)

Before HAYNSWORTH, BOREMAN and J. SPENCER BELL, Circuit Judges.

George L. Russell, Jr., (John A. Shorter, Jr., on brief) for Appellants, and J. Edward Davis, Assistant United States Attorney, (Joseph D. Tydings, United States Attorney, on brief) for Appellee.

HAYNSWORTH, Circuit Judge:

These three codefendants appeal from their conviction of offenses under the Internal Revenue Code relating to

gambling. They question the sufficiency of the evidence and challenge the evidentiary use of their admissions in their pretrial motions to suppress evidence. We find no error in either respect.

Revenue agents received information from a source which they had found reliable on previous occasions that Hammond, Taylor and others were operating a lottery out of a house which appeared to be a summer dwelling. They set up a surveillance of the house and on a number of days in succession saw Hammond and Taylor arrive in separate automobiles at the house in the late afternoon and depart sometime thereafter. On each occasion they moved to and from their automobiles bags and packages which appeared to the agents to contain gambling paraphernalia. Hammond was the owner of the automobile he drove, while that in which Taylor came to and fro was registered in the name of the other appellant, Butler.

On the basis of the original information they had received and their own observations, the agents obtained a search warrant which was executed on July 17, 1959. They knocked upon the door and announced their presence. When there was no response, they broke into the house, where, in a front room, they observed Taylor and Butler busily engaged in removing currency from envelopes and stuffing the money in their pockets. The house was not furnished as a residence, but there were telephones, tables and chairs, four adding machines, coin wrappers and records of lottery operations on earlier days. There were a great many lottery slips, some of which bore Butler's initials. Taylor's pockets were found to contain well over $1,000, while smaller sums were found in the pockets of Butler and Hammond. In Butler's pockets, the agents also found adding machine tapes, pieces of paper with codes and notations, and other gambling paraphernalia.

The agents seized all of the gambling paraphernalia, including the two automobiles.

Before trial, Taylor and Hammond jointly filed a motion to suppress evidence of the articles seized and to return to them "their property." In a following paragraph, they described all of the articles seized in the house except those removed immediately from the persons of the defendants, and, in that paragraph, they referred to themselves as the occupants of the house. In a subsequent paragraph, they described other articles seized immediately from the person of Taylor, and, in still another paragraph, articles seized immediately from Hammond, including his automobile.

In a similar motion, Butler sought the suppression and return to him of the articles removed from his person and of his automobile.

The motions to suppress the evidence seized were denied, and the motions were introduced in evidence at the trial as tending to show that each movant had a proprietary interest in the articles the suppression and return of which he sought.

The defendants do not contest the propriety of the denial of their pretrial motion to suppress evidence.

In United States v. Calamaro, 354 U.S. 351, the Supreme Court held that the obligation to purchase the special occupational tax stamps did not apply to everyone engaged in the numbers or lottery business. Usually the bets are solicited and made initially by "writers," who turn the record of their bets and the money they have collected over to a "banker" who covers all of the bets received. At times "pick-up men" are employed to pick up money and the memoranda of the bets from the "writers" and take them to the "banker."

In considering this type of operation, the Supreme Court held in Calamaro that the pick-up man was not engaged in accepting wagers within the meaning of the re-

quirement that a special occupational stamp he purchased. The writers were so engaged, as was the banker.

Relying upon Calamaro, the defendants first say that the evidence was not sufficient to show that they were not pick-up men or mere clerical employees of an unidentified banker. The contention is without foundation, however. The agents had observed Hammond and Taylor over a considerable period of time, and the observations to which they testified would warrant the inference that Taylor and Hammond jointly were the bankers and not merely clerical employees of some unknown person who never appeared at the banking house. Butler was clearly aiding and abetting the bankers and the articles and paraphernalia removed from his person and the number slips bearing his initials were enough to support an inference that he was also a writer.

The District Judge, to whom the case was tried, expressed the opinion that the statements the defendants made in their pretrial motions to suppress showed their proprietary interest in the gambling paraphernalia, and their proprietary interest justified the finding that they were the bankers and not mere pick-up men or clerical employees. With that, we agree. The conclusion is abundantly supported by Merritt v. United States, 6 Cir., 249 F.2d 19, and United States v. Woodson, 6 Cir., 303 F.2d 49, which factually are quite similar to the present case.

Hammond and Taylor say, however, that in their motions they did not allege that the articles seized in the house, other than those from their immediate persons, belonged to them. In the paragraph in which those articles were listed, they did allege only that they were seized in a house of which they were the occupants, but, in the opening paragraph of the motion, they sought to suppress the use of those articles in evidence and their return to them

as "their property." Plainly, the motion does disclose that they claimed a proprietary interest in the articles.

The appellants contend, finally, that they ought to be relieved of their admissions in their motions because of the decision of the United States Supreme Court in Jones v. United States, 362 U. S. 257, which came down after their pretrial motions had been filed.

Jones had sought the suppression of a package of marihuana found in an awning outside the window of an apartment of which he was an occupant. Jones was charge with the possession of that marihuana, and proof of its possession was all that was required to convict him. The Supreme Court held that Jones was not required to allege in his motion to suppress that he was the possessor of the marihuana in order to have standing to move for its suppression. Theretofore a defendant, in such circumstances, had been faced with the dilemma of foregoing a motion to suppress or of formally admitting all elements of the crime of which he was charged, knowing that his admission could be used in evidence against him. Merritt v. United States, 6 Cir., 249 F.2d 19; Fowler v. United States, 10 Cir., 239 F.2d 93; Heller v. United States, 7 Cir., 57 F.2d 627; Vaught v. United States, 9 Cir., 7 F.2d 370; United States v. Lindsly, E.D. La., 7 F.2d 247.

The decision, of the United States Supreme Court in Jones v. United States, of course, establishes that these defendants would have had standing to move to suppress the evidence without admitting as much as they did, but it does not justify the conclusion that the admission of one who has admitted more than he need have is inadmissible in evidence against him. Admissions which are wholly unnecessary and wholly voluntary regularly are admitted in criminal cases against defendants; indeed, they are the only admissions which are admissible against them. The fact that at the time the defendants may have been under

the justifiable impression that they would be without standing to move to suppress unless they did admit ownership does not warrant the conclusion that the admission was involuntary. In all of the cases which uniformly have approved receipt in evidence of such admissions, the admissions have been made in similar efforts to establish standing to move to suppress.

The dilemma in which these defendants found themselves was not so obvious as that in which Jones found himself. Under the earlier rules governing standing, Jones could not move to suppress the evidence without a complete confession of guilt, while, if he failed to move to suppress, the evidence, itself, was enough to convict. Here, in contrast, the admissions were not confessions of guilt. Ownership of automobiles, adding machines and currency is not unlawful. As it eventuated, proof that the defendants had a proprietary interest in the seized articles tended to establish one element of the offense, but, unlike Jones, only one.

Under these rather dissimilar circumstances, we do not think we are required to so extend the holding in Jones as to now relieve these defendants from the consequences of their voluntary admissions.

Affirmed.